

REMARKS

This responds to the Office Action mailed on July 17, 2007.

Claims 1-6, 37-40, and 42-44 have been canceled by way of this amendment. Claims 34 and 41 have been amended. Claims 47 and 48 have been added. Thus, claims 34-36, 41, and 45-48 are now pending.

For the convenience of the Examiner, Applicant's remarks concerning the claims will be presented in the same order in which the Examiner presented them in the Office Action.

Amendments to Claims 34 and 41

Claims 34 and 41 have been amended. No new matter has been introduced.

Independent claim 34 has been amended by substituting "two or more" for "a", by deleting "non interfering", by inserting "bands of", by substituting "frequencies" for "frequency in the form of an FM carrier frequency", by inserting the phrase "wherein the channel locator controller is configured to identify an available non-interfering carrier frequency from an evaluation of the two or more bands of FM carrier frequencies", by substituting "the" for "an", and by inserting the phrase "non-interfering". Support for this language may be found, for example, in the original disclosure at page 6, lines 8-20.

Independent claim 41 has been amended by inserting the phrases:

wherein the channel locator controller includes a stored program digital computer, the computer to store a database of two or more available non-interfering carrier frequencies arranged by geolocation;

wherein the geolocation source is coupled to the stored program digital computer to provide a geolocation to the stored program digital computer; and

wherein the channel locator controller is configured to identify a selected non-interfering carrier frequency from two or more available non-interfering frequencies stored in the database based on an evaluation of the two or more available non-interfering frequencies

Support for this language may be found, for example, in the original disclosure at page 6, lines 8-20.

New Claims 47 and 48

Claims 47 and 48 have been added. No new matter has been introduced.

Claim 47 recites that the channel locator controller identifies the available non-interfering carrier frequency by selecting a center frequency of a first band of FM carrier frequencies having at least a predetermined frequency width.

Claim 48 recites the channel locator controller identifies the available non-interfering carrier frequency by selecting a center frequency of a widest identified band.

Support for these claims may be found, for example, in the original disclosure at page 6, lines 8-20.

Rejection of Claims 1, 2, 4-6, and 37-46 under 35 U.S.C. §103(a) as Unpatentable over Konisi in view of Loomis

Claims 1, 2, 4-6, and 37-46 were rejected under 35 U.S.C. §103(a) as being unpatentable over Konisi et al. (U.S. 6,181,921) in view of Loomis et al. (U.S. 5,936,572).

As noted above, claims 1, 2, 4-6, and 37-40 have been canceled without prejudice.

To establish a *prima facie* case of obviousness under 35 U.S.C. §103, the prior art reference (or references when combined) must teach or suggest every limitation of the claim. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA, 1974). MPEP §2143.

Neither Konisi nor Loomis disclose all of the limitations recited in independent claim 41, as amended. For example, neither Konisi nor Loomis disclose that "the channel locator controller is configured to identify a selected non-interfering carrier frequency from two or more available non-interfering frequencies stored in the database based on an evaluation of the two or more available non-interfering frequencies" [emphasis added].

Konisi appears to disclose a vehicle system to enable a vehicle-installed TV to switch channels as it moves through different reception areas. The system is computer-based and stores both "used" and "unused" channels for many different geographical areas. Based on the vehicle location, an on-board FM transmitter rebroadcasts the received TV audio to the vehicle's radio FM receiver (for superior audio quality), using an "unused" channel (so as not to interfere with any "used" channel in that particular area). As best understood, Konisi fails to disclose any evaluation of "unused" channels.

Loomis appears to disclose a system for determining the present position of a mobile user (see Abstract). It uses two methods concurrently. A first method may use GPS or similar satellite-based system. A second method uses triangulation from three FM signal sources. The system then selects the result more likely to yield the greatest accuracy. Here, any "evaluation" appears to be at a high level, i.e. to determine which user position is more accurate. Loomis fails to evaluate any "available non-interfering" FM signals.

For the above reasons, independent claim 41 should be found to be allowable over any combination of Konisi and Loomis, and Applicant respectfully requests that the rejection of claim 41 under 35 U.S.C. §103(a) as unpatentable over Konisi in view of Loomis be withdrawn.

If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. MPEP §2143.03.

Claims 45 and 46, which depend from independent claim 41, and incorporate all of the limitations therein, are also asserted to be allowable for the reasons presented above.

Rejection of Claims 3 and 34-36 under 35 U.S.C. §103(a)
as Unpatentable over Konisi in view of Loomis and further in view of Lehtonen

Claims 3 and 34-36 were rejected under 35 U.S.C. §103(a) as being unpatentable over Konisi et al. in view of Loomis and further in view of Lehtonen (U.S. 2001/0049262).

As indicated above, claim 3 has been canceled without prejudice.

Applicant cannot determine the basis for the Examiner's rejection of claims 34-36, because neither the Loomis nor Lehtonen references are discussed in the Examiner's explanation of the grounds for the rejection. For this reason, Applicant is unable to formulate any response to the rejection, other than to assert that none of Konisi, Loomis, and Lehtonen discloses the limitations of identifying two or more bands of FM carrier frequencies below a minimum signal strength, and of identifying an available non-interfering carrier frequency from an evaluation of the two or more bands of FM carrier frequencies.

For the above reasons, independent claim 34 should be found to be allowable over any combination of Konisi, Loomis, and Lehtonen, and Applicant respectfully requests that the rejection of claim 34 under 35 U.S.C. §103(a) as unpatentable over Konisi in view of Loomis and further in view of Lehtonen be withdrawn.

Claims 35 and 36, which depend from independent claim 34, and incorporate all of the limitations therein, are also asserted to be allowable for the reasons presented above.

Additional Elements and Limitations

Applicant considers additional elements and limitations of the claims to further distinguish over the cited references, and Applicant reserves the right to present arguments to this effect at a later date.

Conclusion

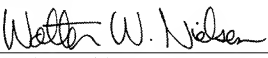
Applicant respectfully submits that claims 34-36, 41, and 45-48 are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney, Ann M. McCrackin (located in Minneapolis, Minnesota) at (612) 349-9592 or Applicant's below-signed attorney (located in Phoenix, Arizona) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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